

Response to Debtor's Objection About The Automatic Stay Exemption Docket #609

I respectfully insist on an automatic stay exemption for a variety of reasons stated below. First and foremost, the debtors have not presented any clear restructuring plan. Their plan to mine Bitcoin is absolutely unfeasible to pay off the debts. I shall not go into the specifics of it since many other (such as the Dr. in docket #611) have already stated them. Currently Celsius is absolutely bleeding money and will be out of cash by October (per Celsius's own statement). The argument that allowing me (and solely me due to the extenuating circumstances) to proceed with my lawsuit and exercise my right to a trial in a court (and before a jury) would somehow impede Celsius's restructuring is ludicrous. As of now Celsius has not (publicly or in public court documents) presented any plan as to the restructuring of the company. All they have done is delay, delay, and delay some more while burning through the company's cash. They are currently doing nothing to generate cash (other than what is already being passively generated by ETH2 tokens) besides presenting a flawed plan to mine Bitcoin with the existing crypto miners. On the contrary, they would be losing money by mining Bitcoin. Per Celsius's statement, they generated 432.3 Bitcoin in July. Assuming that the difficulty will not change (it will increase significantly over time, see Exhibit A) and that Celsius will mine the exact same amount of Bitcoin per month (again, not happening unless they invest significant funds to do so) they would generate roughly \$9.3 million at current Bitcoin prices. They currently have expenses of ~\$50 million (per Celsius's own court filings). That is Celsius losing ~\$40.3 million a month.

The question remains: what are all of Celsius's employees doing if they are not lending crypto, opening accounts, processing withdrawals, etc. It is not logical to think that all of the hundreds of employees are actively working on the restructuring (since the lawyers and extremely expensive consultants which each are billing \$500-\$2000+ per hour to do so are doing that). I cannot speak about everyone, but for me the customer support has been extremely poor. They basically send me generic copy and paste responses that seem to be identical for every (very different) question I ask, of course this is done with a (at least) several day wait. I can assure you that effectively every single depositor (since that is what we are, regardless of what Celsius claims the TOS says, because that is exactly what Alex Mashinsky, and Celsius claimed we are many times in the AMA's) does not support having Celsius spend our money being paid as bonuses and exorbitant salaries for nothing in return.

I will not mince words: this whole bankruptcy is designed to allow Celsius's executives to pay themselves every last cent that they are able to. This is on top of the billions already paid to employees (the bulk of which went to executives such as the CEO, Alex Mashinsky earning ~\$36 million a year at one point). The objection filed by Mr. Sussberg, while well written and researched (although the argument is extremely flawed) most likely cost Celsius several times what I am owed, and currently suing for. That is another example of bad business practice.

My responses to Celsius's latest arguments are as follows:

1. My motion requesting an exemption to automatic stay would not "open the floodgates" because I specifically instructed Celsius to close my account, and terminated my relationship with them as was allowed in the contract. The contract may or may not be binding/enforceable. The question whether I even had the mental capacity to sign the contract with Celsius (the updated TOS that went into effect in April) is highly debatable. In fact, there were a number of factors limiting my mental capacity including extreme lack of sleep, extreme stress and anxiety (due to my dad being near Kyiv, Ukraine in what was then effectively a warzone, there was extremely heavy fighting in his village/town, this being the peak of the Russian's brutality and invasion around Kyiv). I would usually get 2 (or if I was lucky 4 hours) of sleep a night. I effectively was unable to stop checking the news to see what was happening, and to check if my father was still alive. And this had been going on since February 23rd at around 8PM EST. Fortunately after getting some more anxiety medications + the Russians leaving the Kyiv region I was able to get back to normal around May. I legitimately had hallucinations multiple times (potentially to some of the medications that had been prescribed to me), basically the entire period between early March and early May is a blur to me. Since I terminated my relationship with Celsius, my assets should not have even been a part of these proceedings. It would set a dangerous precedent to allow someone to effectively seize/steal assets and then claim bankruptcy protection afterwards. One cannot simply steal something entrusted to the company after it was requested back, and then declare bankruptcy and keep it.
2. When I terminated my relationship with Celsius (July 5th) and they refused to close the account, and therefore it effectively breached the TOS, rendering it null and void. That would require Celsius to immediately return all of my assets to me (minus whatever earnings I had accrued there) and effectively reverse anything brought about by the contract. On Monday July 11th Celsius paid me interest on the crypto (which I told them to specifically not do as I had closed my account with them and terminated the relationship with them effective immediately after the email was sent) the contract was formally breached. After that I filed my lawsuit. Celsius did not file for bankruptcy until July 13th, which was after the breach of contract, hence, I should not have been included in the bankruptcy estate. That is a key reason why I should be allowed to either go forward with my lawsuit, or (an option that I think the estate should prefer if they truly care about not diverting resources) is that your Honor rules that my assets are not apart of the bankruptcy estate (because they are not) and either release them to me, or allow me to proceed with my lawsuit against Celsius, but only allow me to do so by granting a exemption to me, and not lifting the stay.

The debtors' argument that they would need to pay to litigate this is plain silly. They have already (most likely) paid several times the amount that they owe me, to simply not pay me. It simply does not make financial sense to spend \$50,000 to fight a \$5,000 claim. Celsius is not required to pay an attorney to come and litigate this in Florida. They can easily send any representative, (or just do what they should have done on July 5th and return my assets).

Celsius claims that since there are no third parties that is somehow a reason to not allow me to sue. If they so desire, I can easily add Alexander Mashinsky to the lawsuit since he (the CEO) made dozens if not hundreds of fraudulent, false misrepresentations (as well as the usual illegal act of having Celsius use depositor funds to buy CEL directly from himself).

I am not aware of any other proceedings against Celsius, but I am confident that not everyone instructed Celsius to close their accounts. To shield them from this would be morally and legally wrong. They intentionally fraudulently transferred my funds (which should not have been a part of the estate) to the bankruptcy court. Celsius cannot have it both ways, either the TOS are enforced in their entirety, or they are not. Celsius cannot pick and choose the sections of the contract that it likes (such as the part allowing them to use the funds however they want) and ignoring others (such as the part allowing me to close my account whenever I wish, with no restrictions mentioned short of law enforcement or a court order).

Celsius maintains that: "Frishberg fails to show he would sustain more significant harm than other similarly situated claimants if the Motion is denied. There are potentially thousands of unsecured creditors similarly situated to Frishberg. Frishberg has not demonstrated that he will be more prejudiced than any other potential creditor by a short-term delay until a plan is in place". This is false. In reality, I would sustain significant damage, not only to my mental health (Celsius's lawyers have been informed of the specifics, but I am not going to go into it since it doesn't belong in the public record), I (a healthy, active 18 year old) have been experiencing (for the first time ever, starting shortly after Celsius limited withdrawals, and increasing in intensity and frequency after the bankruptcy filing) significant chest pains, chest tightness and trouble breathing at times. I had to schedule an appointment with my doctor as well as run diagnostic tests. And that is only my physical health. My mental health has been a mess, I have had tons of anxiety, trouble sleeping, some depression among other things. So the denying of this motion, and allowing Celsius to effectively steal my assets would have significant harm to me (eggshell skull theory).

Moreover, the financial harm I have suffered is significant to me. Not having my crypto assets caused me to not be able to afford to sign a lease agreement and find a place to live for the school year early in the summer. By the time I was able to (through help from family, which should not be harmed by Celsius's actions) find enough money to be able to afford to sign a lease, the only place that was available (which I was only able to get through a insane amount of

luck, after months of searching and increased anxiety on top of that of Celsius) was significantly out of my price range. My family is covering part of it, but I now need to somehow find about \$500 a month to cover the difference. In addition to purchasing an emotional support cat, to help me deal with the stress of being in a school literally much larger than my previous one (by student population) about 3,000 miles away from my home. I was also planning on purchasing a new phone since mine is outdated, the case is broken, and has a battery that is 2% away from getting to the level that it has an actual chance to literally catch on fire. I was also planning on using my crypto investments to purchase a new laptop (for school) since mine is slow, takes about 10 minutes to startup for whatever reason. That is yet more harm to me, this time in the form of my education. I was also going to purchase (as a congratulations on getting mostly A's your senior year gift) an iPad to use to take notes specifically for my Russian class (due to the e-pen feature). But obviously that isn't going to happen. The amount of harm that has been caused to me by Celsius is hard to measure. I would also sustain more harm than most claimants due to a variety of reasons that I will not enter into the public record (eggshell skull theory).

The major issue with the debtor's motion is that they refer to me as an unsecured creditor, which I should not be, and in fact I shouldn't be a creditor at all. If Celsius had only followed the written contract and did what they were contractually obligated to do, I would have had my assets returned, or at the very least have had my assets in the "custody" account. Celsius is now asking the court to shield them from their gross negligence and wrong doing, which is not fair.

In a effort to save the court and everyone else time and money, I request a summary judgment (if it's in my favor, and if not, I'd like a full hearing) and I propose the following options for your consideration:

1. Your Honor allows me to proceed with the lawsuit that I filed in Hillsborough County. The debtors can choose to contest it or not.
2. Your Honor resets everything to the way it should have been, closing my accounts with Celsius, terminating any relationships and transferring all funds to a wallet that I control (or potentially immediately¹ paid out in cash +5²% of the value of the crypto holdings), and the expenses I have incurred to deal with this (such as filing fees, etc).

Conclusion:

I respectfully request that Your Honor overrules the debtor's objection (docket #609). It is quite a simple case, where Celsius took my assets and put them into the bankruptcy estate where

¹ Refers to as soon as humanly possible to avoid the volatility of the crypto markets.

² To compensate for the unavoidable volatility, even a day can cause the price of crypto to change significantly. As such I would prefer to be paid in kind (in crypto.)

they don't belong. I feel that the “circumstances” (such as them ignoring their own TOS), and the harm that this caused me/will continue to cause me is sufficient to warrant an overruling of their objection and to allow this hearing to either (a) commence, or (b) Your Honor allows me to proceed with my lawsuit or (c) Your Honor orders Celsius to return my assets to me. When Mr. Sussenberg said: “Debtors and all parties in interest should remain focused on the reorganization process,” he meant that Celsius should be allowed to continue to spend my money however it wants, and to deny me justice.

Thank you for your consideration, and I very much look forward to having my day in court.

Best regards,

Daniel A. Frishberg

25th Day of August 2022

Exhibit A

